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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,313	10/10/2000	Marcus Winn	PA1610	5156

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EXAMINER

TRAN, LAMBERT L

ART UNIT	PAPER NUMBER
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2144

DATE MAILED: 01/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/686,313

Applicant(s)

WINN, MARCUS

Examiner

Lambert L. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

1. This Action is in response to the application filed on 10 October 2000.
2. Claims 1-15, presented for examination, are pending.

#### *Priority*

3. No claim for priority has been made in this application.

#### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Pinsley et al., U.S. Patent No 6,070,145, hereinafter referred to as Pinsley.
6. In regard to claims 1, 8, 15, Pinsley expressly disclosed a system, method and computer code for creating a sample pool for a web-based survey [see Pinsley, ABSTRACT, col. 1, lines 58-59] comprising:  
  
*a plurality of host machines for serving an HTML document* [see Pinsley, Figure 1, col. 2, lines 42-44];

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*a survey manager machine connected to each of the plurality of host machines [see Pinsley, Figure 1, col. 1, line 64] ; and*

*an executable tag embeddable in the HTML document (embedding computer program instructions, HTML program), and operable to communicate with a process running on the survey manager machine (surveyor's computer) to create the sample pool when a user accesses the HTML document [see Pinsley, ABSTRACT, col. 1, lines 61-65, col. 3, lines 9-16].*

7. In regard to claims 2, 9, Pinsley disclosed:

*each of the host machines and the survey manager machine are connected to a communications network (computer network) [see Pinsley ABSTRACT, Figure 1].*

8. Claims 3 and 10 limitations recite:

*the survey manager machine further comprises a tag maintenance process operable to generate and maintain the executable tag (HTML).*

In regard to the above claims, Pinsley disclosed a HTML program (a process) *generated* at the surveyor's computer site [see Pinsley, col. 3, lines 9-59, col. 1, lines 64-65]. While Pinsley did not expressly mention *a tag (HTML) maintenance process*, the code in the HTML program called for "Modification to Advertiser's page" substitution [see Pinsley, col. 3, line 25]. Pinsley's teaching, therefore, implied *a tag maintenance process*, in order to modify the advertiser's page. Examiner takes Official Notice (see MPEP § 2144.03) that given a HTML program, a *tag (HTML) maintenance process* in a hypertext programming networking environment was well known in the art at the time the invention was made. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03, namely, "if applicant traverses

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such an assertion, the examiner should cite a reference in support of his or her position".

However, MPEP § 2144.03 further states (See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971)) "a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice". Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed". Further note that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

9. In regard to claims 4, 11, Pinsley disclosed:

*a process running on each of the host machines is operable to copy the executable tag from the survey manager machine and embed the copied executable tag in the HTML document*  
[see Pinsley, col. 2, lines 42-46, Figure 1, reference numerals (1), (9), and (3)].

10. In regard to claims 5, 12, Pinsley disclosed:

*The process running on the survey manager machine further comprises a sampling process for setting a sampling rate and a user qualification process (selecting survey candidates)*  
[see Pinsley, col. 2, lines 30-34, col. 4, lines 39-40].

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11. In regard to claims 6, 13, Pinsley disclosed:

*an invitation process for receiving a user profile and extending an invitation (offering an opportunity to participate) to the user to participate in the sample pool based upon the sampling process and the user profile (predetermined criteria) [see Pinsley, col. 4, lines 11-13, col. 4, lines 44-45].*

12. In regard to claims 7, 14, Pinsley disclosed:

*the process running on the survey manager machine further comprises a survey process for administering a survey (collected, processed and analyzed) to a participating user [see Pinsley, col. 3, lines 5-7].*

13. Since all the claims limitations are expressly taught by Pinsley invention, claims 1-15 are rejected.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Palladino, M, "A Step by Step Guide to Building a Web-Based Survey – Writing HTML Code and ASP Scripts", Drexel University, 1999.
- b. Bayer et al., U.S. Patent No 6,311,190, disclosed system for conducting surveys in different languages over a network with survey voter registration.

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- c. Hamlin et al., U.S. Patent No 6,477,504, disclosed method and apparatus for automating the conduct of surveys over a network system.
- d. Fuerst, U.S. Patent No 6,189,029, disclosed web survey tool, builder and result compiler.
- e. Hanson et al., U.S. Patent 6,457,045, disclosed system and method for group choice making.
- f. West et al., U.S. Patent 6,175,833, disclosed system and method for interactive live online voting with tallies for updating voting results.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lambert L. Tran whose telephone number is (703) 305-4663. The examiner can normally be reached on M-F at 9AM - 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack B. Harvey can be reached on (703) 305-9705. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9700.

L.L.T  
Assistant Examiner  
GAU 2144  
January 13, 2004

  
JACK B. HARVEY  
SUPERVISORY PATENT EXAMINER